

I. INTRODUCTION

This report is the Second Quarterly Report produced by the Office of the Independent Police Auditor pursuant to the requirements of San Jose Municipal Code Section 2.06.020 c. The ordinance requires that the Auditor prepare a quarterly report including:

1. A statistical analysis documenting the number of complaints by category, the number of complaints sustained and the actions taken;
2. An analysis of trends and patterns; and
3. Specific recommendations for change.

This report will follow a similar format as the First Quarterly Report. It addresses quarterly and cumulative statistics, general and specific observations of the San Jose Police Department and the Internal Affairs Unit. The new classification system created by the Internal Affairs Unit as a response to the First Quarterly Report was reviewed. General impressions about the overall effectiveness of the Office of the Independent Police Auditor will also be discussed.

II. STATISTICAL DATA

A. METHODOLOGY

The statistical data compiled by the Office of the Independent Police Auditor encompasses the time from December 14, 1993, through March 31, 1994. The data presented reflects the research and calculations of the staff of the Office of the Independent Police Auditor.

The statistics collected by this office will differ from those collected and disseminated by the Internal Affairs Unit in some respects. The Office of the Independent Police Auditor uses the word “*complaint*” in generic terms to mean “an expression of dissatisfaction or discontent.” When totaling the number of complaints filed with the Office, the Auditor combines Procedural, Policy, and Misconduct Complaints¹, whereas Internal Affairs keeps separate statistics for each classification. Additionally, Internal Affairs uses the “Prevailing Case Classification” to account for the total number of complaints.²

The statistics presented in this report focus primarily on the number of allegations received and not the number of complaints. For example, a single complaint filed by a citizen indicating that unnecessary force was used to effectuate his/her arrest may also state that the officer was rude, or that the officer improperly searched this person. This citizen would have made a single complaint with three different allegations: Unnecessary Force, Rude Conduct and Unlawful Search.

1 The distinctions among Procedural, Policy, Misconduct Complaints are addressed in detail in the section entitled “Police Response to the First Quarterly Report.”

2 The “Prevailing Case Classification” is a classification method where the allegations are a prevailing level number. This determines how the complaint shall be classified. For example, an allegation of Unnecessary Force is a level one, whereas an allegation of Improper Procedure is a level eight. If there is a complaint where there are two allegations, one for Unnecessary Force and the other for Improper Procedure, the complaint will be classified as an Unnecessary Force complaint because it is a level one.

The number of allegations reported is taken directly from the face sheets submitted by Internal Affairs. Internal Affairs classifies the type and the number of allegations.

B. TOTAL NUMBER OF MISCONDUCT COMPLAINTS

During the second quarter of operations, 35 complaints³ were filed directly with the Auditor. In addition, the Internal Affairs Unit submitted 124 complaints⁴ to the Independent Police Auditor for review. Of the 159 total complaints, the Independent Police Auditor has officially closed⁵ 47 complaints.⁶

1. UNNECESSARY FORCE

The Independent Police Auditor reviews all complaints alleging excessive or unnecessary force. The Auditor monitors these cases by reviewing all the investigation conducted, and by periodically attending the interview of civilian witnesses and police officers.

The review also includes reading all the investigative reports, listening to the taped statements of the witnesses and officers, and directly contacting the complainants and witnesses when necessary. The review may also result in requests for additional investigation.

3 The San Jose Police Department defines a complaint as *an act of expressed dissatisfaction that related to Department operations, personnel conduct or unlawful acts*. See San Jose Police Department Duty Manual, Section C 1501.5. The 35 complaints filed directly with the Auditor were subsequently classified by Internal Affairs as 28 “Procedural”, eight “Misconduct”, and one “Informal” complaints.

4 This number includes: (1) Complaints closed by Internal Affairs after the opening of the Office of the Independent Police Auditor; and (2) Complaints *opened* by Internal Affairs after the opening of the Office of the Independent Police Auditor, or which were *opened* at the time of the opening of the Office.

5 The term “officially closed” used by the Office of the Independent Police Auditor is to describe cases where the Auditor concurs with the investigative process and finding, and no further investigation or action is required.

6 See Appendix A-1: Chart for Cases.

In the second quarter, the Office of the Independent Police Auditor reviewed 47 cases that contained 88 new allegations of Unnecessary Force. Of those allegations, two were sustained⁷ and 28 resulted in a finding other than sustained.⁸ There are 58 allegations that are still pending.⁹

The statistics below indicate that, if the force was necessary, the officers are following the proper escalation of force guidelines. Officers are trained to first use their hands to control, arrest or detain an individual. If that fails or is not proper, the next level of force is the OC spray. The baton and deadly force, respectively, are the last level of force used.

The majority of the complaints alleging Unnecessary Force involved the use of hands. Of the 47 Unnecessary Force cases, 35 were instances where the citizen complained that the officers unnecessarily shoved, pushed, tackled, pulled his/her hair or applied a wrist lock. Feet were allegedly used 13 times. These instances where feet were involved, included kicking and stepping on the person to hold him/her down. The baton was allegedly used fourteen times. Of these fourteen baton uses, the majority were blows to the body other than the head. OC spray was allegedly used seven times. Seven complaints involved the alleged use of flashlights, body slams against the police car and the forcible taking of blood samples.¹⁰

The statistics also reveal that there were more incidents of baton use than OC spray use. However, the use of OC spray, unlike the baton, requires that the person be facing the officer

⁷ The allegations are sustained when the investigation disclosed sufficient evidence to clearly prove the allegation made in the complaint. *See San Jose Police Department Duty Manual*, Section C 1513.20.

⁸ Internal Affairs employs several other findings to describe situations where an allegation is not proven. This report will not statistically address these other findings. These other findings include: Unfounded, Exonerated, Not Sustained, and No Finding. *See San Jose Police Department Duty Manual*, Section C 1513.20 *See* Appendix A-5 for definitions of other findings.

⁹ *See* Appendix A-2: Chart for Unnecessary Force Allegations.

¹⁰ *See* Appendix A-3: Chart for Alleged Uses of Unnecessary Force.

within a proper range in order to be effective.

2. OTHER TYPES OF ALLEGATIONS

The Independent Police Auditor is required to review at least 20% of complaints that relate to matters other than Unnecessary Force. These other allegations are Improper Procedure, Unlawful Arrest, Rude Conduct, Failure to Take Action, Excessive Police Service, Unlawful Search, Damaged and/or Missing Property, Discrimination and Unofficerlike Conduct.

The Auditor has reviewed a total of 215 other allegations. Of the 215 allegations, 25 were sustained and 56 resulted in a finding other than sustained. There are 134 allegations that are still pending as of the end of the second quarter.¹¹

C. TOTAL NUMBER OF PROCEDURAL COMPLAINTS

During this quarter, there were 218 Procedural Complaints filed and audited. The total includes those Procedural Complaints filed at the Auditor's office and at the Internal Affairs Unit. These are separate from the Misconduct Complaints.

D. TOTAL NUMBER OF INFORMAL COMPLAINTS

A total of 29 Informal Complaints were audited for this quarter. This is a new category that the Auditor will continue to monitor.

¹¹ See Appendix A-4: Chart for Other Types of Allegations.

III. POLICE RESPONSE TO THE FIRST QUARTERLY REPORT

There were five areas of concern that were addressed in the First Quarterly Report.

These areas included:

- A. Defining Complaints
- B. Auditing Complaints
- C. Intervention Counseling
- D. Potential Bias within the Internal Affairs Unit
- E. Objectivity of the Internal Affairs Process

A. DEFINING COMPLAINTS

Prior to the inception of this office, Internal Affairs used a two-prong system to classify complaints. The cases were classified as Misconduct or Procedural Complaints. This was an old system that incorporated but did not distinguish the Informal Misconduct Complaints from the truly Procedural Complaints.

Internal Affairs has created and implemented a system consisting of four types of complaints: Formal¹², Informal, Procedural and Policy.

Formal Complaints are those complaints, which alleged a serious violation of Department policy or a violation of law by an officer. The complaints will continue to be investigated in the same manner and no change is noted.

Informal Complaints are those complaints involving allegations of minor transgressions

¹² Formal and Informal Complaints are complaints of misconduct.

on the part of a subject officer¹³ which may be handled informally by bringing the matter to the attention of the officer's chain of command at the Complainant's request.¹⁴ This is typically the Rude Conduct complaint. However, if the complainant feels that such conduct was in his/her opinion egregious that a formal complaint is warranted, Internal Affairs is obligated to investigate this complaint as such. The complainant has ultimate control as to whether to treat the complaint as Formal or Informal.

Procedural Complaints are now defined in two separate portions. The first portion includes the following: "After the initial investigation by the Intake Officer, the Department determines the subject officer acted reasonably and within Department Policy and Procedure given the specific circumstances and facts of the incident and that despite the allegation of misconduct, there is no factual basis to support the allegation." At the end of the investigation, the assigned finding will be "Within Department Policy."¹⁵

A second portion of the definition includes: "The allegation is a dispute of fact case wherein there is no independent information evidence or witnesses available to support the complaint and there exists another judicial entity which is available to process the concerns of the complainant." A finding of "No Misconduct Determined" will be assigned to the dispute of fact cases.¹⁶

For example, a person files a complaint alleging an Unlawful Search, where the complainant states that the police entered his/her home and conducted a search. After a

¹³ Subject officer refers to the officer of whom the complaint is about.

¹⁴ San Jose Police Department, Response to Independent Police Auditor's First Quarterly Report, page 7, May 25, 1994.

¹⁵ Ibid., page 6.

¹⁶ Ibid., page 6.

preliminary investigation, the Internal Affairs Officer discovers that the complainant is on parole and has a search clause. The case will be closed with a finding of “No Misconduct.”

Policy Complaints pertain to an established policy, properly employed by a Department member, which the complainant understands but believes is inappropriate or not valid. A complaint of this nature could be for the disapproval of a towing ordinance. These complaints do not focus on the conduct of the officer but on the policy or law with which the complainant disagrees.

There are many advantages to this new system if properly employed. The Formal, Informal and Procedural Complaints are all indexed by officers’ names. The complaints will be retained for a period of six years. Not only will they be subject to Intervention Counseling, but they will also be subject to Motions for Discovery in criminal and civil proceedings. This tracking system will enable the Auditor and the police department to better identify trends or patterns as they develop.

B. AUDITING COMPLAINTS

Auditing procedural complaints was problematic because there were only two forms of documentation for these cases by Internal Affairs: the handwritten log and the individual investigator’s handwritten notes. These notes were difficult to read and to understand, other than to the author.

All Internal Affairs investigators are now equipped with their own computers. All classifications of citizen complaints are now typed and entered into the Internal Affairs database. A cumulative log and an individual face sheet is prepared for these types of complaints. The complaining citizens are now given an opportunity to review and sign their statements. They are

also notified in writing regarding the disposition of their complaints and given information on how to access the Auditor's office.

Of the 218 Procedural Complaints, 61 complaints were randomly chosen to survey and audit for this quarter. Personal contact with the complainant was achieved in 39 cases. Of the 39 citizens that were interviewed, 28 cases were found to be properly classified as Procedural. In five cases, according to the complainants, the allegations were not compatible with the Procedural Log. One case became a Formal Complaint.

In twenty-two of the remaining cases, the complainants were not contacted because they had either moved, had the phone disconnected or after repeated attempts did not return the phone calls.

Since January 15, 1994, Internal Affairs has been using the Informal Complaint system. This office has conducted an audit of this new classification system by personally contacting the complainants to verify if they were satisfied with the informal handling of their complaints.

In 22 cases, we successfully contacted the complainants. In six cases, we were unable to contact the complainant. In one case, the complaint did not involve the San Jose Police Department.

Of those complainants contacted, the survey indicated that the allegations stated were compatible with the allegations in the Informal Log. Fifteen of the 22 complainants were satisfied with the informal handling of their complaints. Of the four complainants who were dissatisfied with the handling of their Informal Complaint, one person will seek to formalize the complaint and the three other complainants indicated that they did not wish to further pursue the matter. One person was unable to say if he/she was satisfied with the informal handling of his/

her complaint. Another person contacted changed his/her Informal Complaint to a formal handling of the complaint. Finally, one other complaint involved a San Jose police dispatcher.

This audit revealed that the Informal Complaints as defined have been properly identified and handled. There were no complaints of undue pressure from Internal Affairs to have their complaints filed as Informal. Furthermore, the audit revealed that Internal Affairs investigators took time to explain to the complainants their options of filing a Formal or Informal Complaint.

The Auditor will continue to monitor these complaints to ensure that the complainants are not pressured into accepting this less formal method of handling their cases. The Auditor will also review these cases closely to ensure that only minor transgressions are addressed in this manner. In addition, under this new system, the Unit Commander must approve the classification of a complaint as Informal. This will standardize the classification process so that there is uniformity in the Internal Affairs Unit.

C. INTERVENTION COUNSELING AND PROCEDURAL COMPLAINTS

Unlike Misconduct Complaints, Procedural Complaints were not subject to Intervention Counseling regardless of the fact that there were over four times as many Procedural Complaints as Misconduct Complaints. Misconduct Complaints, which include Formal and Informal Complaints, and Procedure Complaints are now tracked and indexed by the officers' names and will be subject to Intervention Counseling. Any officer receiving three or more Formal Complaints or five or more Procedural or Informal Complaints in a twelve-month period will receive Intervention Counseling.

D. POTENTIAL BIAS WITHIN THE INTERNAL AFFAIRS UNIT

In order to avoid potential bias, formalized written policy will be added to the Internal Affairs Procedure Manual requiring an Internal Affairs investigator to notify his/her Unit Commander of any potential conflict arising from prior contacts between the investigator and the subject officer or the complainant. The Auditor frequently communicates with the Internal Affairs Investigators and has verified that they are aware of this policy and are in compliance.

E. OBJECTIVITY OF THE INTERNAL AFFAIRS PROCESS

During the first quarter, citizens frequently came to the Auditor's office to complain about the manner in which they were treated at Internal Affairs. They complained about leaving with the feeling that they were not believed or that Internal Affairs Investigators were more interested in disproving rather than proving their case.

The second quarter has seen a decline in the number of citizens complaining about their interaction with Internal Affairs Investigators. All Internal Affairs Investigators have been given specific direction by the Unit Commander on how to be more sensitive when interacting with the complainants. The Unit Commander receives feedback from the Auditor regarding any complaints involving the officers. The Auditor has met with the new investigators to acquaint them with the functions of this office and to inform them of particular areas of interest. Many hours are spent at the Internal Affairs Unit where the majority of the officer interviews take place. The investigators will also call the Auditor and alert her office of any particular problems with the cases and of upcoming witness interviews.

IV. OBSERVATIONS

The Office of the Independent Police Auditor continues to serve as an alternative forum in which citizens can file their complaints. This quarter appears to have a decline in total number of new complaints filed, from 171 to 159. Because this office does not use the Prevailing Case Classification to account for the number of complaints, the number of cases is less even though the number of allegations rose by over 35%. The number of Unnecessary Force allegations rose from 63 to 88. The number of other types of allegations also rose significantly from 131 to 215.

The Auditor will continue to review all of the Unnecessary Force cases and the majority of all other cases. The Auditor will also audit the new classification system. A more complete evaluation of this new system will be discussed in the Third Quarterly Report. Unannounced audits to compare the information sent to the Auditor and the information found in the files of Internal Affairs will also continue to be a function of this office.

The Auditor's Office has continued to promote the office to the community. The following is a partial list of groups or organizations with whom the Auditor has met:

- PAT-7 meeting with Councilmember George Shirakawa,
- Kathy Meir, President and Chris Burdick, Executive Director of the Santa Clara County Bar Association,
- Bay Area Police Oversight Network,
- Kiwanis Pueblo de San Jose,
- John Crew, Staff Attorney Director from the ACLU,
- Story Road Business Association,
- Publisher and Editors of the San Jose Mercury News, and
- Citizen's Police Academy.

The Internal Affairs Unit and the Auditor's Office are working closely towards developing and implementing effective ways for their offices to work together and to accomplish

the mission of the Office of the Independent Police Auditor. There are open channels of communication between the Auditor, the Internal Affairs Unit and the Office of the Chief.

A sergeant has been assigned as the liaison for the Auditor's Office. This sergeant is responsible for gathering and tracking all the information to and from Internal Affairs and the Auditor's Office. The sergeant also facilitates the exchange of information and scheduling of witness interviews for those cases that are assigned to the Bureau of Field Operations for investigation.

An area that has been problematic for this office is the lack of resources to adequately research and authenticate issues that are raised by citizens' complaints. There are serious allegations that have been raised; however, this office lacks the means to do a historical analysis of the available data or statistics to adequately prove or disprove a hypothesis. In order to gather a sufficient quantity of data whenever an issue arises, the Auditor's Office has to hand-search all the files. An issue may not become significant until the second or third quarter; therefore, there is a need to automate the data in the files in order to retrieve the information later.

The following allegations have been raised in several cases. However, there is not sufficient data in this quarter to do a proper analysis.

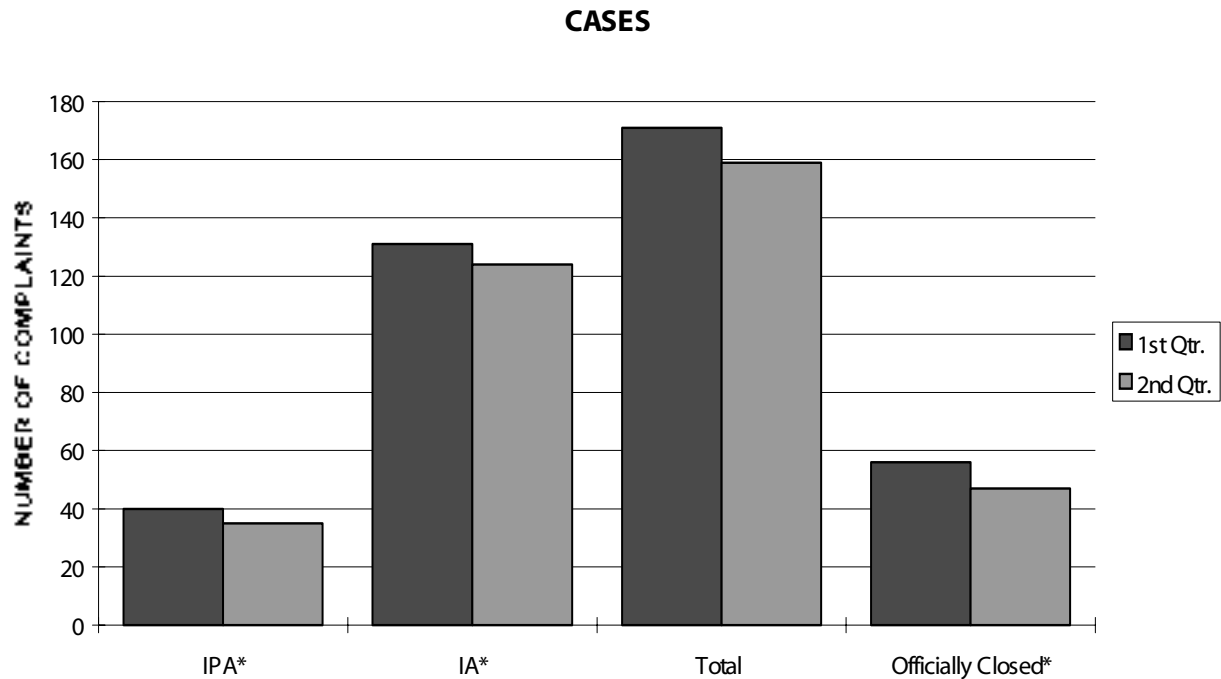
- Citizens allege that they are deterred from observing police practices.
- Police allegedly arrest or threaten to arrest citizens who use recording devices.
- Many Internal Affairs investigations take too long to complete and may impact the outcome through a loss of complainant interest or loss of witnesses.

- Unnecessary injuries are allegedly inflicted while handcuffed.
- Parents allege that youths are inappropriately stereotyped as gang members.
- Pre textual Arrests for drunk in public, resisting arrest or under the influence of a drug or narcotic charges are allegedly made.
- Unlawful home entries under the guise of “Welfare Checks” are allegedly made.

This office is sensitive to the City’s budgetary constraints and has begun to address the need for the proper collection and analysis of data. The Auditor’s Office is in the process of creating a database, which would adequately contain the information in the files for later retrieval. The services of an analyst would be of great assistance. However, in the mean time the three person staff of this office will begin to input all the back data including all the incoming cases.

V. CONCLUSION

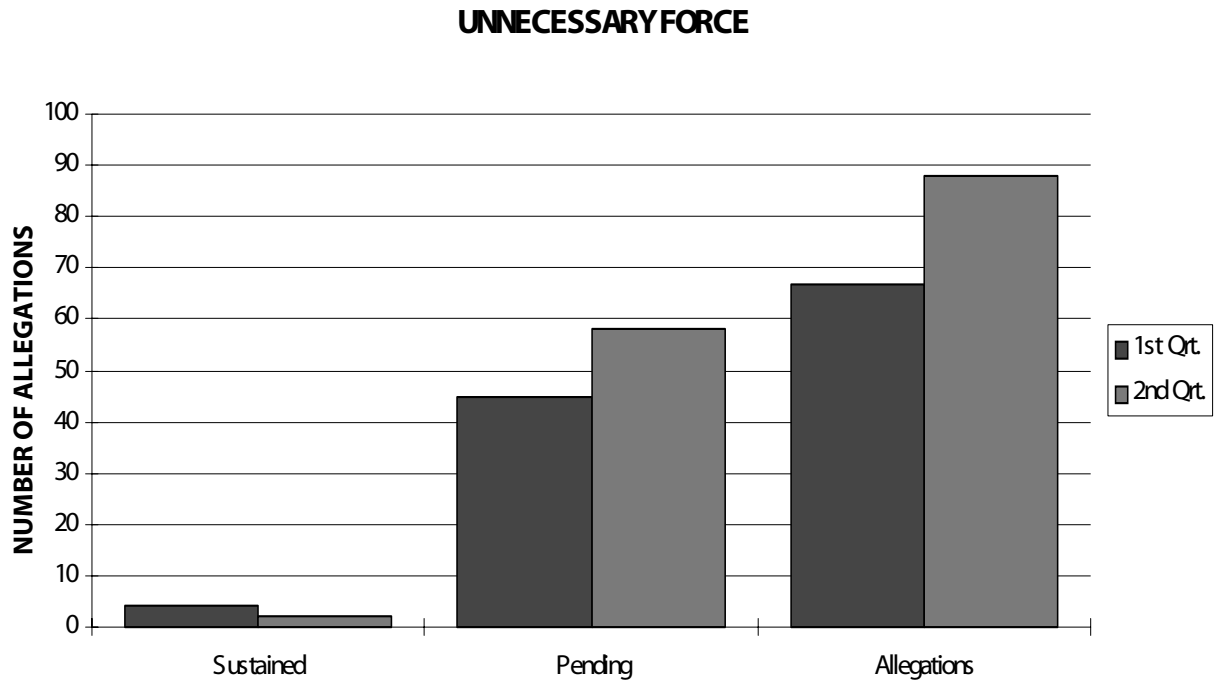
The Office of the Independent Police Auditor is performing the functions it was intended to accomplish. With the passage of time, the Office is evolving into its role of serving as an alternative forum for citizens to file their complaints, for auditing the investigations of the aforementioned complaints and for reaching out into the community to help bring about greater confidence in the San Jose Police Department's Internal Affairs process.

APPENDIX A-1

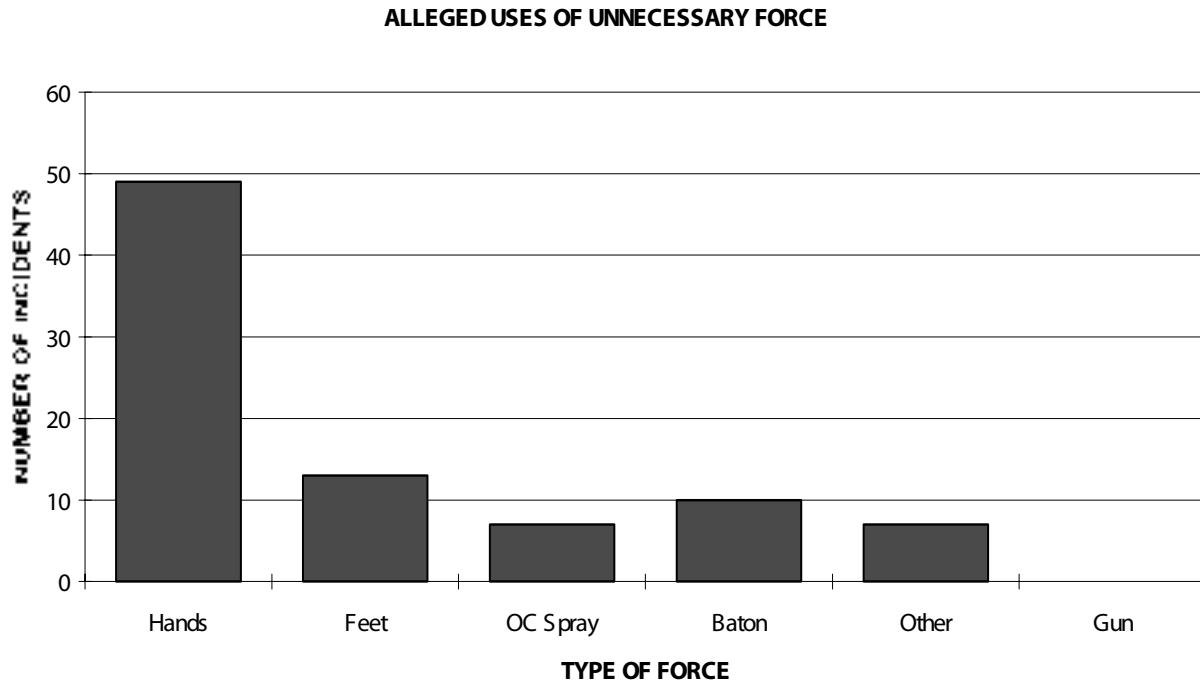
* IPA (Independent Police Auditor) - The number of complaints filed/updated at our officer per complainant's request.

* IA (Internal Affairs Unit) - The number of complaints file directly at IA, including the department initiated cases.

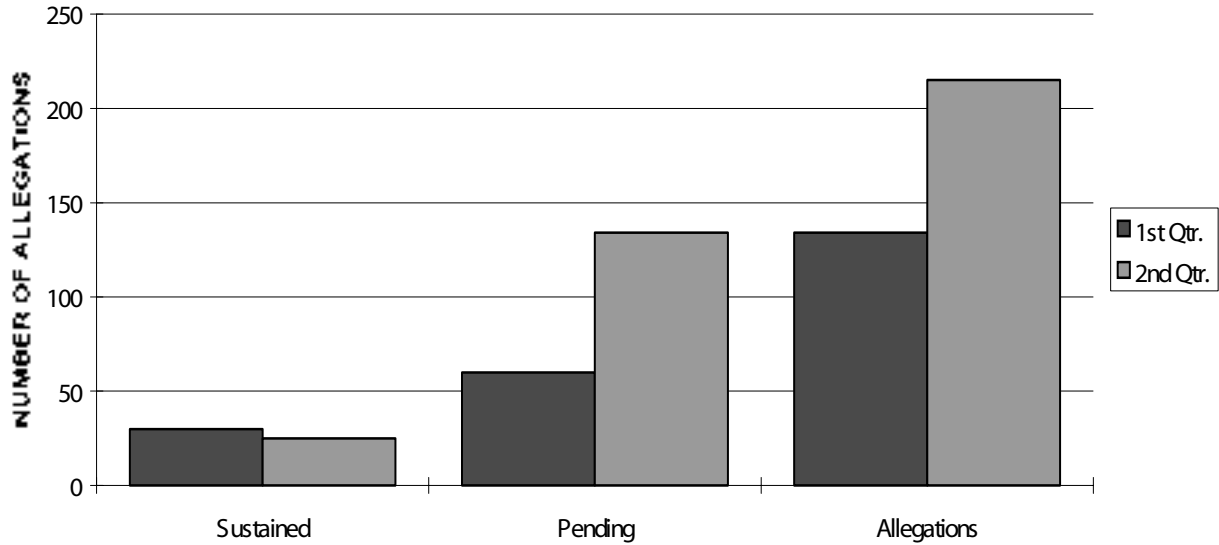
* Officially Closed - This term is used by the IPA is to describe cases where the Auditor concurs with the investigation process and finding, and no further investigation or action is required. The first quarter graphs contain cumulative allegations for the First Quarterly Report. These numbers are not the same as the numbers from the First Quarterly Report because they have been updated.

APPENDIX A-2

- The first quarter graphs contain cumulative allegations from the First Quarterly Report. These numbers are not the same as the numbers from the First Quarterly Report because they have been updated.

APPENDIX A-3

- This chart contains only second quarter statistics.

APPENDIX A-4**OTHER TYPES OF ALLEGATIONS**

- The first quarter graphs contain cumulative allegations from the First Quarterly Report. These numbers are not the same as the numbers from the First Quarterly Report because they have been updated.

APPENDIX A-5

DEFINITIONS OF FINDINGS

1. **SUSTAINED:** The investigation disclosed sufficient evidence to clearly prove the allegation made in the complaint.
2. **NOT SUSTAINED:** The investigation failed to disclose sufficient evidence to clearly prove the allegation made in the complaint or to conclusively disprove the allegation.
3. **EXONERATED:** The acts, which provided the basis for the complaint or allegation, occurred; however, the investigation revealed that they were justified, lawful and proper.
4. **UNFOUNDED:** The investigation conclusively proved that the act or acts complained of did not occur. This finding also applies when the individual member(s) or employee(s) named were not involved in the act or acts, which may have occurred.
5. **NO FINDING:** The complainant failed to disclose promised information to further the investigation; or the investigation revealed that another agency was involved and the complaint or complainant has been referred to that agency; or the complainant wishes to withdraw the complaint; or the complainant is no longer available for clarification.